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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,111	01/04/2002	Venkatesh R. Iyer	NA11P066/01.308.01	8633
758	7590	09/20/2005	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			SWEARINGEN, JEFFREY R	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,111

Applicant(s)

IYER ET AL.

Examiner

Jeffrey R. Swearingen.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-22, and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-22 and 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 6/27/2005. These drawings are acceptable, and the objection is withdrawn.

Specification

2. The objection to the disclosure involving trademarks is withdrawn. However, the Examiner maintains the objection to the disclosure involving the misspelling of the word "pseudocode". The Examiner, due to a discrepancy between the electronic file wrapper and Applicant's submission, notified Applicant of the wrong location of the misspellings in the disclosure. Instead of page 8, line 6 and page 18, line 26, Applicant is directed to page 7, line 6 and page 17, line 26 for the occurrences of the misspelling.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 12, 25, 28, and 30 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. Applicant's claims show that utilizing the state machine as being representative of the response time is critical or essential to the practice of the invention, but this feature is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Applicant has led the Examiner to believe that utilizing a state machine to be "representative of the response time if the state is in a valid state" is a key feature of the invention, based on page 6, lines 3-16

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of the specification. However, the Examiner has been unable to find material in the specification that explains how having a state machine in a valid state would be useful in calculating response times or representing response times. The Examiner is additionally unaware of any methods that would allow one of ordinary skill in the art to use a state machine – a logical definition of the current state or condition of a machine – to represent a quantitative amount such as a response time.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-6, 8-9, 11-19, 21-22, 24-28 and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Dietz et al. (U.S. Patent No. 6,839,751).

7. In regard to claims 1, 14, and 27, Dietz discloses *receiving packet data; aggregating the packet data into flows; identifying application verbs and information relating to them in the flows; determining whether the application verbs are valid; updating a state machine if it is determined that the application verbs are valid; and storing the information relating to the application verbs; wherein the information relating to the application verbs is capable of being used to calculate response times associated therewith*. See Dietz, Abstract; column 2, lines 11-27; column 2, lines 44-46; column 4, lines 14-33; column 5, line 65 – column 6, line 19; column 11, lines 40-58; column 32, lines 1-51. By this rationale claims 1, 14 and 27 are rejected.

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8. In regard to claims 2 and 15, Dietz is applied as in claims 1 and 14. Dietz further discloses *determining whether the packet data is associated with a new flow*. See Dietz, column 4, lines 26-30. By this rationale claims 2 and 15 are rejected.

9. In regard to claims 3 and 16, Dietz is applied as in claims 2 and 15. Dietz further discloses *if the packet data is determined to be associated with a new flow, further creating a flow, creating a data structure, and inserting the data structure into the flow*. See Dietz, column 4, lines 16-20; column 9, lines 40-58. By this rationale claims 3 and 16 are rejected.

10. In regard to claims 4 and 17, Dietz is applied as in claims 3 and 16. Dietz further discloses *identifying a protocol identifier associated with the flow, and determining a number of known application verbs associated with the protocol identifier*. See Dietz, column 6, lines 20-35; column 7, lines 53-65; column 9, lines 27-67; column 11, lines 5-36. By this rationale claims 4 and 17 are rejected.

11. In regard to claims 5 and 18, Dietz is applied as in claims 4 and 17. Dietz further discloses *allocating memory for the data structure based on the number of known application verbs associated with the protocol identifier*. See Dietz, column 11, lines 30-36. By this rationale claims 5 and 18 are rejected.

12. In regard to claims 6 and 19, Dietz is applied as in claims 4 and 17. Dietz further discloses *the number of application verbs associated with the protocol identifier is determined utilizing a map*. See Dietz, column 27, line 41 – column 28, line 55. By this rationale claims 6 and 19 are rejected.

13. In regard to claims 8 and 21, Dietz is applied as in claims 1 and 14. Dietz further discloses *inserting a data structure into the flows*. See Dietz, column 4, lines 16-20; column 9, lines 40-58. By this rationale claims 8 and 21 are rejected.

14. In regard to claims 9 and 22, Dietz is applied as in claims 8 and 21. Dietz further discloses *populating and updating the data structure with the information*. See Dietz, column 9, lines 40-58. By this rationale claims 9 and 22 are rejected.

15. In regard to claims 11 and 24, Dietz is applied as in claims 9 and 22. Dietz further discloses *determining whether a response is complete, and calculating a response time if it is determined that the response is complete*. See Dietz, column 22, line 61 – column 23, line 10; column 40, lines 26-52. By this rationale claims 11 and 24 are rejected.

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16. In regard to claims 12 and 25, Dietz is applied as in claims 11 and 22. Dietz further discloses *determining whether the state machine is in a valid state, and utilizing the state machine as being representative of the response time if it is determined that the state machine is in a valid state*. See Dietz, column 12, lines 55-65; column 13, lines 1-27; column 22, line 61 – column 23, line 6; column 31, lines 25-47. By this rationale claims 12 and 25 are rejected.

17. In regard to claims 13 and 26, Dietz is applied as in claims 1 and 14. Dietz further discloses *the information relating to the application verbs is capable of being used to calculate response times associated therewith in real-time*. See Dietz, column 32, lines 1-51. By this rationale claims 13 and 26 are rejected.

18. In regard to claim 28, the limitations of this claim are embodied within claims 1, 8, and 12. Therefore the rejections against these claims are repeated for claim 28. By this rationale claim 28 is rejected.

19. In regard to claim 30, the limitations of this claim are embodied within claims 1-6, 8-9, and 11-12. Therefore the rejections against these claims are repeated for claim 30. By this rationale claim 30 is rejected.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 7, 20 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz.

22. In regard to claims 7 and 20, Dietz is applied as in claims 6 and 19. Dietz does not explicitly state the use of RMON. Rather, Dietz describes that avoiding the use of RMON will improve performance in the system. See Dietz, column 34, lines 61-67. It would be obvious to one of ordinary skill in the

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networking art to use RMON with Dietz since Dietz has stated that it has found a way to avoid working with RMON in order to improve system performance. Therefore, according to Dietz, the use of RMON would actually be an older technological variant on the Dietz invention. By this rationale, claims 7 and 20 are rejected.

23. In regard to claim 29, the limitations in this claim are embodied within claims 1, 4, 5, 6 and 7. Therefore the rejections against these claims are repeated for claim 29. By this rationale claim 29 is rejected.

Response to Arguments

24. Applicant's arguments filed 6/27/2005 have been fully considered but they are not persuasive.

25. Applicant's amendments to the drawings have overcome the rejection.

26. As previously stated, Applicant's amendments to the specification have overcome the trademark rejection. However, "pseudocode" is misspelled as shown previously in this action. The objection to the disclosure is maintained.

27. The rejection of claims 12, 25, 28, and 30 under 35 U.S.C. 112, 1st paragraph is maintained.

Applicant's state machine is separate from the data structure which calculates the response time.

"Representing a response time" with a state machine is not calculating a response time by use of a data structure. The state machine does take into "account various errors, complications, network mishaps, etc..." as stated in Applicant's cited portion of the disclosure. This, however, does not enable any person skilled in the art to which it pertains in such full, clear, concise and exact terms to create a state machine that "represents a response time".

28. Applicant's amendments have overcome the rejections under 35 U.S.C. 101.

29. Applicant argues that Dietz fails to disclose determining "whether the application verbs are valid". In Dietz, column 11, lines 40-58, a signature is checked against flow entries in a database. If the matching entry in the database is found, additional state processing is completed. The act of checking signatures against a database is determining "whether the application verbs are valid." Applicant argues

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that "Dietz never determines 'whether the application verbs are valid' before storing information", but Applicant has not claimed this. Rather, Applicant has claimed updating a state machine if it is determined that the application verbs are valid. The storing of information related to application verbs and determining whether application verbs are valid are two separate and unconnected portions of the claim without causal dependency. Limitations are read in light of the specification, but the specification is not read into the claim limitations. In regard to updating a state machine, the state processing and updates for the flow signature and flow entry database cover these arguments as taught in column 11, lines 40-58.

30. Applicant argues again for claims 2-9 and 11-13 that Dietz does not disclose "determining whether the application verbs are valid." The Examiner has already addressed this argument.

31. Applicant argues that for claim 28, Dietz does not disclose "determining whether the application verbs are valid." The Examiner has already addressed this argument.

32. Applicant argues for claim 28, that Dietz does not disclose a data structure containing "a plurality of application verb objects for identifying information relating to application verbs...and a state machine object." Applicant is referred again to column 11, lines 40-58, where a database – or data structure – is checked for flow entries compared to signatures. This is a plurality of application verb objects. The state of the entry is changed, which is a state machine object.

33. The arguments for claims 7, 20, and 29 made by Applicant are the same arguments previously addressed concerning the validity of application verbs and updating a state machine.

Conclusion

34. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH**



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shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RUPAL DHARIA
SUPERVISORY PATENT EXAMINER